

STATE OF SOUTH CAROLINA**(Caption of Case)****IN RE:**

Happy Rabbit, LP on Behalf of,

Windridge Townhomes, Complainant,

v.

Alpine Utilities, Inc., Respondent

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA****COVER SHEET****DOCKET****NUMBER: 2008 - 360 - S**

(Please type or print)

Submitted by: Richard L. Whitt**SC Bar Number:** 62895**Address:** Austin & Rogers, P.A.**Telephone:** 803-251-7442508 Hampton Street, Suite 300**Fax:** 803-252-3679Columbia, South Carolina 29201**Other:** 803-256-4000**Email:** rlwhitt@austinrogerspa.com

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DOCKETING INFORMATION (Check all that apply)☐ **Emergency Relief demanded in petition** ☐ **Request for item to be placed on Commission's Agenda expeditiously****Other:** Routine

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)			
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit of Publication	<input type="checkbox"/> Letter	<input type="checkbox"/> Request	
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certifica	
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigat	
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement	
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment	
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input checked="" type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter	
<input type="checkbox"/> Gas	<input type="checkbox"/> Certification of Mailing	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response	
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discove	
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition	
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation	
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Return	<input type="checkbox"/> Subpoena	
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff	
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:	
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest		
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit		
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report		

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2008-360-S**

IN RE: Happy Rabbit, LP on Behalf of, Windridge)
Townhomes, Complainant, v. Alpine)
Utilities, Incorporated, Respondent)

PETITION FOR
RECONSIDERATION

INTRODUCTION

The Order in this Docket was issued on July 17, 2009, as Order number 2009-496. Happy Rabbit, LP on Behalf of Windridge Townhomes, (hereinafter as the “Happy Rabbit”) received a copy of that Order on July 24, 2009. Happy Rabbit’s Petition for Reconsideration, pursuant to R. 103-881, S.C. Code Ann. (1976, as amended) follows:

FINAL ORDER

The Commission’s Final Order reads, in pertinent part, as follows:

“The crux of this case is the interpretation of 27-33-50 of the South Carolina Landlord/Tenant Act, even in regard to the proper application of Commission Regulation 103-533(3). While this Commission does not concede that it is without jurisdiction to address the issues raised by Happy Rabbit, the Office of Regulatory Staff’s argument regarding judicial economy is a sound one. Certainly, the circuit courts of the state have jurisdiction to interpret this statute, and such a case is currently pending in the circuit court. Resolution of that case could resolve the matters in dispute between the parties.”

DISCUSSION

The grounds for the Company’s Petition are as follows:

1. **This Commission may not delegate its duties to the Circuit Court.** Carolina Water Service, Inc. v. South Carolina Public Service Commission, 248 S.E.2d 924 (1978). “While [the] Public Service Commission is not a court and does not sit to enforce contractual rights, Commission exercises quasi-judicial powers in fulfillment of its statutory responsibility as arbiter of reasonableness of rates charged by public utilities. Code 1976, § 58-5-290.” *Id.* at 925. Also, “[w]hile it is true the Commission is not a court and does not sit to enforce contractual

rights, it is equally true the Commission exercises quasi-judicial powers in the fulfillment of its responsibility under Section 58-5-290 as the arbiter of the reasonableness of rates charged by public utilities. As we stated in *Beard-Laney, Inc. v. Darby*, 213 S. C. 380, 49 S.E.2d 564 (1948).” *Id.* at 927. Finally, “[e]ven a governmental body of admittedly limited powers is not in a strait jacket in the administration of the laws under which it operates. Those laws delimit the *field* which the regulations may cover. They may imply or express restricting [limitations] of public policy. And of course they may contain express prohibitions. But in the absence of such limiting factors it is not to be doubted that such a body possesses not merely the powers which in terms are conferred upon it, but also such powers as must be inferred or implied in order to enable the agency to effectively exercise the express powers admittedly possessed by it...” *Id.* at 927 (quoting *Beard-Laney, Inc. v. Darby*, 213 S. C. 380, 49 S.E.2d 564 (1948)).

2. Furthermore, there is overwhelming statutory¹ (see *infra* note 1) and case law authority² (see cases cited *infra* note 2) that this Commission has jurisdiction to decide a willful overcharge Complaint, in light of § 27-33-50 S.C. Code Ann. (1976, as amended).

APPLICABLE REGULATIONS

In the two Complaints before the Commission, the following statutes are applicable and dealing with the same subject matter: (i) § 58-3-140 (rates, service, and practices of all public utilities), (ii) § 58-5-210 (rates, service, and practices of all public utilities), (iii) § 58-5-290 (rates, service, and practices of all public utilities), (iv) § 58-5-300 (rates, services, and practices of all public utilities), and (v) § 27-33-50 (*de facto*, rates, services, and practices of all public utilities), and are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result, *Joiner v. Rivas*, *supra*. Furthermore, § 58-5-290 additionally is *in pari materia* with § 27-33-50 in that § 58-5-290 specifically gives this Commission jurisdiction where improper rates are charged in violation of any provision of law, such as § 27-33-50.

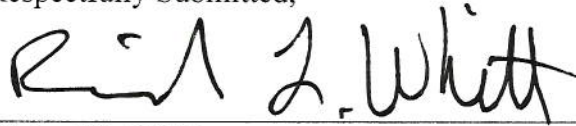
¹ Commission statutes which are applicable are § 58-3-140, § 58-5-10 (4), § 58-5-210, § 58-5-290, and § 58-5-300.

² See *Kiawah Property Owners Group v. Public Serv. Comm’n of S.C.*, 359 S.C. 105, 109, 597 S.E.2d 145, 147 (2004) (“The PSC is a government agency of limited power and jurisdiction, which is **conferred either expressly or impliedly by the General Assembly.**”) (emphasis added); *City of Camden v. Public Service Comm’n of S.C.*, 283 S.C. 380, 382, 323 S.E.2d 519, 521 (1984) (“The Public Service Commission is a governmental body of limited power and jurisdiction, and has only such powers as are **conferred upon it either expressly or by reasonably necessary implication by the General Assembly.**”) (emphasis added)

CONCLUSION

Based on the foregoing, this Commission should reconsider its decision and assume jurisdiction over the complaints herein.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "R. L. Whitt". The signature is written in a cursive, flowing style.

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August 11, 2009

Columbia, South Carolina

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Townhomes (Defendant/Respondent) and
Carolyn C. Cook